

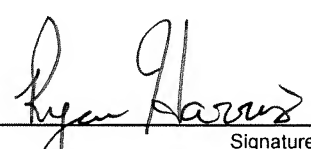
Doc Code: AP.PRE.REQ

PTO/SB/33 (01-09)

Approved for use through 02/28/2009. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>		Application Number	Filed
		10/750,295	December 31, 2003
		First Named Inventor	
		Peiguang Zhou	
		Art Unit	Examiner
		1794	Jennifer A. Steele
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number _____</p> <p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>58,662</u></p>		<p> Signature</p> <p>Ryan P. Harris Typed or printed name</p> <p>864-271-1592 Telephone number</p> <p>March 23, 2009 Date</p>	
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<p><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PATENT
ATTORNEY DOCKET NO.: KCX-1460 (19924)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application: Zhou et al.)	Examiner: Jennifer A. Steele
)	
Serial No: 10/750,295)	Art Unit: 1794
)	
Filed: December 31, 2003)	Confirmation No: 9196
)	
Title: Single Sided Stretch Bonded Laminates, and Methods of Making Same)	Deposit Account No: 04-1403
)	
)	Customer No: 22827

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Madam:

In conjunction with the filing of a Notice of Appeal, Applicants respectfully request review of the basis of rejections of the pending claims.

Currently, claims 1-5, 8-13, 16-21, and 36 are pending. Independent claim 1, for instance, is directed to a single sided elastic laminate capable of being rolled for storage and unwound from the roll when needed for use. The laminate comprises an elastic layer comprising continuous filament strands, a facing layer bonded to only one side of the elastic layer, and an adhesive that demonstrates an open time of between about 0.2 seconds and 3 seconds deposited between the elastic layer and the facing layer. The elastic laminate further comprises a layer which comprises a meltblown nonblocking agent applied to the elastic layer in an amount of between about 0.2 and 2.0 gsm, whereby the layer is not in contact with the facing layer or the adhesive when unwound. The layer which comprises the meltblown nonblocking agent is adhered to the elastic layer forming a not gathered layer.

In the Office Action, independent claim 1 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Mleziva (U.S. Patent No. 6,057,024) in view of Wang (U.S. Patent No. 4,460,728) and Owen ("Release Agents", Encyclopedia of Polymer Science and Technology) and Benoit (U.S. Patent No. 4,833,017).

Mleziva is directed to a composite elastic material. The composite elastic material is formed from an anisotropic elastic fibrous web **12** disposed between a first extensible layer **24** and a second extensible layer **28**. Col. 7, lines 17-44; Figs. 1 and 10.

In stark contrast to Mleziva, Applicants claim a single sided elastic laminate and a facing layer bonded to only one side of said elastic layer. As noted in the specification,

while it would be desirable to reduce the basis weight of the stretch bonded laminate such that the material is less costly and more flexible, it has been heretofore unclear how to eliminate the extra facing layer(s) without causing the rolled material to stick, if it is stored prior to use. Pg. 3, lines 33-36.

As noted, Mleziva discloses that the fibrous web **12** is bonded to a first extensible layer **24** and a second extensible layer **28**. Mleziva does not provide any suggestion or motivation to construct a single sided elastic laminate wherein a facing layer is bonded to only one side of the elastic layer as disclosed and claimed by Applicants. Neither Wang, Owen, nor Benoit remedy this deficiency.

Additionally, the Office Action states,

Mleziva teaches one embodiment wherein meltblown fibers are formed directly on top of the extruded elastomeric filaments or alternatively, a layer of elastomeric meltblown fibers may be deposited on a foraminous surface and rows of elastomeric filaments formed directly upon the elastomeric meltblown fibers. (Col. 15, lines 1-15).

Applicants respectfully note that the excerpt of Mleziva identified by the Office Action is directed to forming the elastomeric anisotropic fibrous web **12** (composite **130** in Fig. 2). The composite is then still placed between a first extensible layer and a second extensible layer. As Mleziva notes, “whether or not the ribbon-shaped elements are coated with meltblown fibers, the adhesion between the elastomeric web **12** and the extensible layers **24** and **28** may be enhanced by coating the contact surface of each extensible layer with an adhesive resin.” Col. 17, lines 22-26.

In stark contrast, Applicants disclose and claim “a layer which comprises a meltblown nonblocking agent applied to the elastic layer . . . which . . . is not in contact with said facing layer or said adhesive when unwound.” As such, not only does Mleziva not disclose this limitation, Mleziva actually teaches away from a meltblown layer that is not in contact with a facing layer or adhesive. Neither Wang, Owen, nor Benoit remedy this deficiency.

In response to this argument, the Examiner indicates that “Applicants structure includes

an elastic layer in the middle and two outer layers, one called a facing layer and the other layer containing a meltblown antiblocking agent.” Furthermore, the Examiner goes on to state, “while Mleziva does not describe an embodiment where one layer is called a facing layer and one layer comprises a meltblown antiblocking agent, Mleziva teaches the structure of the claimed invention with the exception of the antiblocking agent.” Thus, the Examiner seemingly has interpreted Applicants’ claimed single “facing layer” as being simply an outer layer. Such an interpretation is clearly contrary to Applicants’ disclosure and what is commonly understood by one skilled in the art. Applicants note that “words in patent claims are given their ordinary meaning in the usage of the field of the invention. . .” *Toro Co. v. White Consol. Indus., Inc.*, 199 F. 3d 1295 (Fed. Cir. 1999).

Furthermore, the Examiner indicates that “a single sided laminate is not structurally correct, as Applicant’s laminate has two sides” and “a facing layer is still equated with a layer.” Applicants respectfully disagree. The specification clearly conveys to one skilled in the art the meaning of “single sided laminate.” For instance, ¶ [0007] of the published application states that a single sided stretch-bonded laminate is “a stretch bonded laminate with a gatherable facing layer on only one side.” One skilled in the art would appreciate that, in light of the specification, a single sided laminate is a laminate with only one facing layer (of which a “facing layer” is not simply “a layer”).

Additionally, as correctly noted in the Office Action, Mleziva fails to disclose Applicants’ claimed nonblocking agent (independent claim 1) or peel strengths less than 200 g (claim 3), 100 g (claim 4), or 50 g (claim 5). Nevertheless, in an attempt to render these claims obvious, the Office Action combines the base combination with Benoit. Benoit is directed to a cling wrap film (see Title). Benoit discloses that a thermoplastic film contains an antiblock agent mechanically bonded to one surface producing a film with significant cling properties on one surface and no significant cling property on the opposite surface.

First, Applicants note that independent claim 1 requires “a layer which comprises a meltblown nonblocking agent applied to the elastic layer.” Benoit, on the other hand, discloses impregnating powdered particulate into the film mechanically. Col. 5, lines 7-23. Second, Benoit applies a nonblocking agent to a film. Conversely, Applicants claim applying the nonblocking agent to the elastic layer that comprises continuous filament strands. Third, Benoit

discloses cling wrap for use in packaging goods, pallet loads, etc. There is simply no motivation to one of ordinary skill in the art to look to modify one of the extensible layers of Mleziva (which is directed to use in garment materials, pads, diapers and personal care products – col. 1, lines 14-15) with the cling wrap of Benoit in an attempt to construct Applicants' claimed invention. Fourth, in as much as Benoit is cited as disclosing Applicants' claimed amount of nonblocking agent, Applicants note that the antiblocking agent of Benoit is a powdered particulate mechanically bonded to a film constructed of LLDPE (see pg. 17 of Applicants' specification that discloses some exemplary materials for use as the continuous filament strands). Applicants respectfully submit that there is simply no correlation that may be drawn from Benoit in an attempt to reach Applicants' claimed invention. One of ordinary skill in the art would not glean from Benoit to apply the amount of antiblock agent disclosed in Benoit to an elastic layer comprising continuous filament strands as claimed by Applicants.

Applicants respectfully submit that one skilled in the art having common sense would not combine the references in the manner suggested in the Office Action. Plainly, the Office Action's only incentive or motivation for so modifying the references in the manner suggested in the Office Action results from using Applicants' disclosure as a blueprint to reconstruct the claimed invention out of isolated teachings in the prior art, which is improper under 35 U.S.C. § 103. Accordingly, it is respectfully submitted that any such modification of the cited references relies on the impermissible use of hindsight, which cannot be successfully used to support a *prima facie* case of obviousness.

In response to this argument, the Examiner continues to focus on simply a “nonblocking agent” rather than a “**meltblown** nonblocking agent” claimed by Applicants. For instance, the Examiner states, “Mleziva differs from the current application and does not teach a meltblown layer with a nonblocking agent.” Thus, the Examiner seeks to combine Benoit and Owen that teach nonblocking agents with Mleziva in an attempt to obviate Applicants' claims. However, Applicants do not claim a meltblown layer with a nonblocking agent. Applicants claim “a layer which comprises a **meltblown nonblocking agent**.” Thus, in order to meet Applicants' claim limitation, the references would need to obviate a nonblocking agent that is meltblown and not simply a meltblown layer that includes a nonblocking agent. None of the references disclose or suggest such a limitation.

As such, Applicants respectfully submit that, at least for the reasons indicated above, independent claim 1 patentably defines over the references cited. Applicants also respectfully submit that, at least for the reasons indicated above, the dependent claims 2-5, 8-13, 16-21, and 36 also patentably define over the references cited. The patentability of the dependent claims, however, certainly does not hinge on the patentability of the independent claims.

Additionally, the Final Office Action included a double patenting rejection. Specifically, claims 1-5, 8-13, 16-21 and 23-24 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 9, and 12 of Application No. 11/011439 and claims 1-20 of Application No. 11/070307. Applicants, however, believe that the present application is otherwise in condition for allowance and the present application is the earliest filed application. Thus, "if a 'provisional' nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer." MPEP § 804(I)(B)(1.).

Finally, Applicants acknowledge that claim 8 is presently dependent upon cancelled claim 7. Applicants will correct the dependency of claim 8 upon receiving the Panel's decision.

As such, Applicants respectfully submit that the present application is otherwise in condition for allowance and favorable action, therefore, is respectfully requested. Examiner Steele is invited and encouraged to telephone the undersigned, however, should any issues remain after consideration of this Response.

Please charge any additional fees required by this Response to Deposit Account No. 04-1403.

Respectfully requested,

DORITY & MANNING, P.A.



Ryan P. Harris

Registration No. 58,662

P.O. Box 1449

Greenville, SC 29602-1449

Phone: (864) 271-1592

Facsimile: (864) 233-7342

Date: 3/23/09